

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

HOMELAND INSURANCE COMPANY
OF NEW YORK,

Plaintiff,

v.

CLINICAL PATHOLOGY LABORATORIES,
and SONIC HEALTHCARE USA, INC.,

Defendants.

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1:20-CV-783-RP

ORDER

Before the Court is the report and recommendation of United States Magistrate Judge Susan Hightower concerning Defendants Clinical Pathology Laboratories, Inc. and Sonic Healthcare USA, Inc.'s Motion for Summary Judgment. (Dkt. 63). Both parties timely filed objections to the report and recommendation. (Pl.'s Objs., Dkt. 126; Defs.' Objs., Dkt. 138).

A party may serve and file specific, written objections to a magistrate judge's findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C.

§ 636(b)(1)(C). Because the parties timely objected to a portion of the report and recommendation, the Court reviews that portion of the report and recommendation *de novo*. The Court reviews the remainder of the report and recommendation for clear error. Having done so, the Court overrules both parties' objections and adopts the report and recommendation as its own order.

Accordingly, the Court **ORDERS** that the report and recommendation of United States Magistrate Judge Susan Hightower, (Dkt. 112), is **ADOPTED**. Defendants' Clinical Pathology Laboratories and Sonic Healthcare USA, Inc.'s Motion for Summary Judgment, (Dkt. 63), is **GRANTED IN PART** and **DENIED IN PART**. Defendants' Motion is **GRANTED** as to

Homeland's (1) breach of warranty claim, (2) promissory estoppel claim, (3) first reformation claim, and (4) Prior Notice Exclusion affirmative defense, as well as (5) Defendants' request that defense costs incurred in defending the ICC claims do not erode policy limits under the 2017 Policy.

Defendants' motion is **DENIED** as to Homeland's (1) claim for declaratory relief, (2) second reformation claim, (3) Prior Knowledge Exclusion affirmative defense, and (4) misrepresentation affirmative defense.

SIGNED on September 29, 2022.

A handwritten signature in blue ink, appearing to read "Robert Pitman", written over a horizontal line.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE